

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.4456& 4457/Del/2019
Assessment Year: 2013-14 & 2014-15

DCIT Central Circle –II Noida	Vs.	Zync Global Pvt. Ltd. B-16, Sector-2, Noida U.P. 201301 PAN No.AAACZ5235H
(APPELLANT)		(RESPONDENT)

Cross Objection No.55 & 56/Del/2022
(In ITA No.4456/Del/2019 & 4457/Del/2019)
Assessment Year: 2013-14 & 2014-15

Zync Global Pvt. Ltd. B-16, Sector-2, Noida U.P. 201301 PAN No.AAACZ5235H	Vs.	DCIT Central Circle -II Noida
(APPELLANT)		(RESPONDENT)

ITA No.7640/Del/2018
Assessment Year: 2015-16

Zync Global Pvt. Ltd. B-16, Sector-2, Noida U.P. 201301 PAN No.AAACZ5235H	Vs.	DCIT Central Circle Noida
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. P.N. Baranwal, CIT DR
Respondent by	Sh. Amit Goyal, CA Sh. Pranav Yadav, Advocate

Date of hearing:	17/01/2024
Date of Pronouncement:	22/01/2024

ORDER

PER N. K. BILLAIYA, AM:

ITA No.4456/Del/2019 and 4457/Del/2019 and cross objection No.55/Del/2022 and 56/Del/2022 are appeals and cross objections by the revenue and the assessee preferred against the order of the CIT(A)-4, Kanpur dated 26.02.2019 pertaining A.Y. 2013-14 and 2014-15.

2. ITA No.7640/Del/2018 is the appeal by the assessee preferred against the order of the CIT(A)-4, Kanpur dated 10.10.2018 pertaining to A.Y.2015-16.

3. Since common issues are involved in the captioned appeals they were heard together and are disposed of by this common order for the sake of convenience and brevity.

4. The cross objection and the appeal by the assessee go to the root of the matter, therefore, we decided to adjudicate them first. The common challenge by the assessee is that the assessment order passed by the AO is contrary to the provisions of section 153D of the Act.

5. Representatives of both the sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of rule 18 (6) of the ITAT Rules.

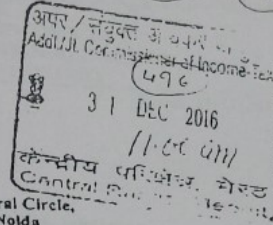
6. Briefly stated the facts of the case are that a search and seizure / survey action has been conducted at various residential and business premises of Apple Group of Companies on 11.11.2014. Assessee is one of the group company which deals in trading various electronic and other products and also trading of fabric and others including online platform.

7. During the course of search at the business premises of M/s. Apple Industries Limited, M/s. Nirman Private Limited, M/s. M.G. Mettalo Private Limited and M/s. Promart Retail India Pvt. Ltd. certain information belonging to the assessee were retrieved from the HD's / Pendrives/ DVD's particularly from the hard disc of the computer of Amit Chaudhary an employee of the concerns.

8. The entire quarrel revolves around the approval granted by the JCIT, Central Range, Meerut u/s. 153D of the Act which is as under :-



Office of the
Deputy Commissioner of Income Tax, Central Circle,
2nd Floor, ARTO Complex, Sector-33, Noida
Phone and Fax-(0120) 2504337



F. No. DCIT/CC/Noida/S&S/153D/2016-17/ 2623

Dated : 30/12/2016

To,

The Joint Commissioner of Income Tax,
Central Range, Aayakar Bhawan,
Bhainsali Ground, Meerut.

Sir,

Sub : Draft assessment orders u/s 153A/153C/143(3) of the I.T. Act, 1961 in Apple Group (D.O.S.
11/11/2014) – Approval u/s 153D of the I.T. Act, 1961 – regarding.

Please find herewith revised list of cases for your kind approval u/s 153D of the IT Act.

Sl. No	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg, ✓	AEKPG6296A	2009-10 to 2015-16
2	Smt. Shaloo Narender Kumar Garg, ✓	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg, ✓	ABIPG9791P	2009-10 to 2015-16
4	Smt. Madhu Garg, ✓	ABIPG9792Q	2009-10 to 2015-16
5	Sh. Pulkit Garg, ✓	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg, ✓	AAIPG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garg, ✓	AAHPG8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd., ✓	AAGCA9960N	2009-10 to 2015-16
9	M/s Nirman Stelco Pvt. Ltd., ✓	AACCN4842Q	2009-10 to 2015-16
10	M/s M. G. Metalloy Pvt. Ltd., ✓	AAGCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd., ✓	AAFCP8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit., ✓	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd., ✓	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd., ✓	AAFCA8106K	2009-10 to 2015-14
15	M/s Apple Insurance Brokers Pvt. Ltd., ✓	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd., ✓	AAACZ5235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd., ✓	AAHCA8642G	2010-11 to 2015-14
18	M/s Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

Draft assessment order received Late on 30/12/2016
Beyond the time as per internal Act in Place.
and thus having a very little time/short time for proper
examination of facts of the case/for enquiries etc.

For J.C. I.T., Central Range (Meerut)

Yours sincerely,

(Akhtar H. Ansari)

Deputy Commissioner of Income
Central Circle Noida

OFFICE OF THE
JOINT COMMISSIONER OF INCOME TAX
CENTRAL RANGE, BHANSHALI GROUND, MEERUT.
Phone-0121-2403191, Fax-0121-2510082

F. No. JCIT/Central Range/Meerut/S&S/153D/2016-17/ 1477 Dated: 31-12-2016

To,
The Dy. Commissioner of Income Tax,
Central Circle, Noida.

Subject: Prior approval u/s 153D in the cases of Apple Group cases- regarding.

Please refer to your office letter F. No. DCIT/CC/Noida/S&S/153D/2016-17/2623 dated 30-12-2016 received in this office on 31-12-2016 on the above mentioned subject.

2. In the following cases of **Apple Group**, prior approval u/s 153D of the IT Act, 1961 is accorded for passing assessment orders in respect of the assesses for the assessment years as mentioned below:

Sl. No	Name of the assessee	PAN	A. Yrs.
1	Sh. Narender Kumar Garg,	AEKPG6296A	2009-10 to 2015-16
2	Smt. Shaloo Narender Kumar Garg,	AADPG1563F	2009-10 to 2015-16
3	Sh. Yogender Kumar Garg,	ABIPG9791P	2009-10 to 2015-16
4	Smt. Madhu Garg,	ABIPG9792Q	2009-10 to 2015-16
5	Sh. Pulkit Garg,	AJEPG5760A	2009-10 to 2015-16
6	Smt. Ruchi Garg,	AAIPG1671M	2009-10 to 2015-16
7	Sh. Pawan Kumar Garg,	AAHPG8132G	2009-10 to 2015-16
8	M/s Apple Industries Ltd.,	AAGCA9960N	2009-10 to 2015-16
9	M/s Nirman Stelco Pvt. Ltd.,	AACCN4842Q	2009-10 to 2015-16
10	M/s M. G. Metalloy Pvt. Ltd.	AAGCM5789D	2011-12 to 2015-16
11	M/s Promart Retail India Pvt. Ltd.,	AAFPC8743B	2009-10 to 2015-16
12	M/s Apple Sponge & Power Limit.	AAFCA1965L	2009-10 to 2015-16
13	M/s Apple Metal Industries Ltd.,	AAACD7670E	2009-10 to 2015-16
14	M/s Apple Buildtech Ltd.,	AAFCA8106K	2009-10 to 2013-14
15	M/s Apple Insurance Brokers Pvt. Ltd	AAECA5320N	2009-10 to 2015-16
16	M/s Zync Global Pvt. Ltd.,	AAACZ5235H	2012-13 to 2015-16
17	M/s Apple Iron Enterprises Pvt. Ltd.,	AAHCA8642G	2010-11 to 2013-14
18	M/s Mastermind Trade-in-Private Ltd	AAECM9435E	2009-10 to 2015-16

3. A technical approval is accorded to pass assessment orders in the above cases on the basis of drafts assessment orders submitted for the assessment years in reference years. You are directed to ensure taking into account the seized documents/papers and comments in the appraisal report pertaining to A. The fact of initiation of penalty proceedings, wherever, applicable, must also be incorporated in the last part of the order. The initiation of correct penalty provisions of I.T. Act u/s 271(1)(c)/ 271AAB, as per facts of case, must be ensured.

4. This office reference no of approving the draft orders shall invariably be quoted in the assessment orders to be passed. A copy of final assessment orders passed in these cases should be sent to this office record immediately on passing the assessment orders.

5. It must also be ensured that if any document in this case, pertains to any third party assessed with a AO, the necessary information for taking necessary action must be sent to concerned AO immediately.

Encl.: As above.

(Shri Singh)
Joint Commissioner of Income
Central Range, Meerut

9. It can be seen from the above 18 cases were approved u/s. 153D of the Act and what is glaring is the stamp put wherein it has been stated “ Draft assessment order received late on 30.12.2016 beyond the time and thus having very little time for proper examination of the facts of the case records etc”.

10. This approval clearly shows the haste and the mechanical manner there being no application of mind on the part of the approving authority.

11. On identical set of facts on the very same approval exhibited elsewhere this Tribunal in one of the group cases of M.G. Metalloy Private Limited in ITA No.3693/Del/2018 held the assessment order illegal in pursuance of hollow and cosmetic approved u/s. 153D. The relevant findings read as under :-

“10. In nutshell, the approval under S: 153D is repugnant for more than one reasons;

(i) the approval accorded under Section 153D is admittedly without any occasion to refer to the assessment records and seized materials, if any, incriminating the assessee and hence such approval is in the realm of an abstract approval of draft assessment orders and consequently suffered from total non-application of mind.

(ii) approval granted hurriedly in a spur involving voluminous assessments spanning over 5 assessment years admittedly a

symbolic exercise to meet the requirement of law. The JCIT himself has made such fact abundantly clear without any demur.

(iii) The red flag raised by JCIT and unambiguous assertions of the JCIT himself that the approval granted is in the nature of "technical approval and he is having very little time at his disposal for proper examination of facts of the case or for related enquiries says it all and has brought quietus to any different possibility or interpretation. The approving authority himself has thus discredited its own approval.

(iv) abject failure in drawing satisfaction on objective material while giving a combined approval for 5 assessments and also without evaluating the nuances of each assessment year involved. The combined approval of several assessee combinedly for multiple assessment years runs contrary to the Judgment of the Hon'ble Allahabad High Court in the case of PCIT vs. Sapna Gupta judgment dated 12-12-2022 Income Tax appeal no. 88 of 2022. The Hon'ble High Court inter alia observed that the compliance of S. 153D qua each assessee and for each assessment year is expected.

(v) The mundane approval under Section 153D in a cosmetic manner gives infallible impression of approval on dotted line and without discharging the onus placed on competent authority thus defeats the intrinsic purpose of supervision of search assessments. Such hawkish approval has thus tarred the assessment and rendered it bad in law.

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12. The identical issue has been favourably adjudicated in assessee's own case in ITA 3306/Del./2018 order dated 23-08-

2021 concerning other AY 2015-16 where co-ordinate bench found total lack of propriety in such statutory approval. There are plethora of decisions of various co-ordinate benches including Sanjay Duggal & ors (ITA 1813/Del/2019 & ors; order dated 19.01.2021 which have also echoed the same view on similar fact situation.

13. The CIT(A) in para 7 of first appellate order has brushed aside the legal objection summarily merely on an inept & indifferent premise that the assessment order makes mention of the approval from JCIT under 153D of the Act. The cryptic conclusion drawn by the CIT(A) is bereft of any reasons whatsoever and thus cannot be reckoned to be a judicial finding on the point. The observations so made are not tenable in law.

14. In the light of foregoing discussions, We are unhesitatingly disposed to hold that the assessment order for AY 2014-15 in question, in pursuance of a hollow & cosmetic approval accorded under S. 153D and unndeniably without application of mind, is rendered unenforceable in law and hence quashed.”

12. Similar view was taken in another group case Ruchi Garg in ITA No.1436 to 1438/Del/2022 and 1440/Del/2022 and Cross Objection No.41 to 43 and 45/Del/2023 wherein the coordinate Bench followed the decision of this Tribunal in the case of M.G. Metalloys in ITA No.3693/Del/2018.

13. Since in the group cases which are part of the same approval mentioned here in above the coordinate Bench has

categorically held that the approval accorded is without application of mind and further held it to be un-enforceable in law and quashed. Respectfully following the decision of the coordinate Bench (supra) we hold accordingly. The cross objections No. 55 and 56 /Del/2022 are allowed the corresponding appeals by the revenue in ITA No.4456/Del/2019 and 4457/Del/2019 are dismissed and the additional ground raised by the assessee in ITA No. 7640/Del/2018 is allowed.

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

NEHA

Date:- .01.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI